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Date 12-23-98

Surname [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
OP:E:EO:R:2

OCT 22 1998

Employer Identification Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(6) of the Internal Revenue Code. We have determined that you do not qualify for exemption under that section of the Code. Our reasons for this conclusion and the facts upon which it is based are explained below.

The information submitted indicates that you were organized on [REDACTED], under [REDACTED]. Your Certificate of Incorporation states that your purposes are:

- (1) to promote social and economic vitality in [REDACTED] by creating a farmers market that serves the community as a whole;
- (2) to operate a farmers market to support local agriculture by providing a means for local farmers to sell directly to consumers;
- (3) to provide consumers access to locally grown fresh foods;
- (4) to stimulate the local economy by increasing sales that spill over from the farmers market;
- (5) to create a focal point where people can meet and carry on the tradition of community living, and enhance communication between urban and rural people in the [REDACTED], and
- (6) to carry on any and all additional activities incident, related, or appropriate to the furtherance of the above purposes.

[REDACTED]

Your bylaws provide that you will be managed by a board of trustees, numbering no less than seven, and that at least two trustees shall be vendors and at least one of which shall be a farmer. Your bylaws also provide that at each annual meeting, the trustees shall elect trustees to hold office for three year terms, and that your officers shall be elected or appointed from among your trustees. Neither your Certificate of Incorporation nor your bylaws make any provision for members or membership meetings.

In your application, you state that your mission is (a) to provide venue for the sale of locally grown and produced foods, (b) to foster direct producer-to-consumer relationships, (c) to educate consumers about the health benefits and economic benefits of purchasing locally produced products, and (d) to promote the economic vitality of the area in which you operate. To support this mission, you state that you operate a farmers market in [REDACTED] from [REDACTED].

You state that your board of trustees meets on a monthly basis throughout the year, at which meetings it establishes the rules and regulations of the market, enters into a lease agreement with [REDACTED] for the market venue, maintains general liability insurance, plans for controlled market expansion, hires two market managers seasonally, establishes standards of product quality within the market, and sets the vendor fee structure. You state that the market managers are responsible for enforcing the market's rules and regulations, collecting weekly vendor fees, monitoring product quality, monitoring public safety issues, and producing the educational programming you sponsor. Vendors sign a copy of the rules and regulations each year indicating that they understand, agree to, and accept the rules as written.

You also state that your future plans include encouraging controlled growth in the number of participating market vendors in order to maintain the vibrancy of the market and its profitability for its vendors, and continuing the encouragement of small and emerging food growers and producers to participate in the market to support economic vitality of the area. You state that currently you have [REDACTED] participating vendors and that your future plans are to increase this number to a maximum of [REDACTED].

You state that the vendors' weekly fees, which comprise your largest source of income, are \$[REDACTED] per [REDACTED] space in your market. Vendors also pay an annual fee of \$[REDACTED] to participate in the market; you list this payment on your financial statement

as a membership fee. In your application, however, you indicate that the qualifications necessary for membership in your organization are not applicable.

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Rev. Rul. 58-224, 1958-1 C.B. 242, holds that an organization which operates a trade show as its sole or principal activity primarily for the purpose of rendering particular services to individual persons is not entitled to exemption from federal income tax as an organization described as a business league in section 501(c)(6) of the Code. In this case, the general purpose of the organization is to promote the interest of trade and increase the facilities of commercial transactions, particularly in connection with the display, distribution, and sale of merchandise. However, the organization's sole activity consists of the staging of an annual merchandise show, primarily exhibits by manufacturers, under the sponsorship of the chamber of commerce. The revenue ruling concludes that the activities of the organization substantially serve the exhibitors and retailers as a convenience and economy in the conduct of their businesses by providing selling opportunities for the distributors, and that therefore the organization is rendering particular services for individual persons as distinguished from the improvement of business conditions generally.

Rev. Rul. 68-264, 1968-1 C.B. 264, defines a particular service for the purposes of section 501(c)(6) of the Code as including an activity that serves as a convenience or economy to

the members of the organization in the operation of their businesses.

Rev. Rul. 73-411, 1973-2 C.B. 180, states that in the case of a chamber of commerce or similar organization, the common business interest required under section 1.501(c)(6)-1 of the regulations is usually the general economic welfare of a community. Membership is voluntary and open generally to all business and professional men and women in the community. The revenue ruling also defines trade associations or business leagues as similar to chambers of commerce or boards of trade, except that they serve only the common business interests of the members of a single line of business or of the members of closely related lines of business within a single industry. The revenue ruling further states that it has been established as a matter of statutory construction that in employing popular names in describing many of the organizations exempted under Subchapter F of the Code, such as "labor organizations," "chambers of commerce," and others, Congress is presumed to have had reference to organizations as they actually exist and are commonly known. This means that where the requisite characteristics of the organizations exempted by such terms are not otherwise fixed by regulations or statute, the Service is required to look to the characteristics of such organizations as they have commonly come to be known in actuality. It means also that successful applicants for exemption must be shown to possess at least the essential characteristics of the class of organizations commonly known by such names.

Based on the statutory construction of section 501(c)(6) of the Code, it is a well established principle that section 501(c)(6) is intended to apply only to membership organizations which further the common business interests of their members and which are financed, at least in part, through membership dues. The legislative history of the statute, and the rules of statutory construction applicable to that section of the Code dealing with exempt organizations, provide that only membership organizations supported by membership dues or assessments are included in the term of the exemption under section 501(c)(6). Thus, an organization which is not in fact membership supported lacks the most significant characteristic common to organizations for which exemption was provided under section 501(c)(6).

Although you characterize the vendors' annual fee as a "membership" fee, it is obvious that the vendors are not "members" of your organization. As discussed in Rev. Rul. 73-411, supra, since the number of your vendors is limited rather than open and voluntary among all potential vendors, their number would not be considered as membership under the provisions of

section 501(c)(6) of the Code. For the same reason, your board of trustees cannot be considered as members. Also, your board of trustees do not provide any monetary support for your organization. For these reasons, you lack essential characteristics for organizations recognized as exempt under section 501(c)(6).

Also, since your financial support derives primarily from vendors' weekly fees for market space, which fees are paid only if a particular market space is used on a particular day, and you do not show that you receive any dues payments from your members, you have no ongoing financial support from members. Your only income that could possibly be characterized as being received from "members" consists of payments for services rendered by you directly to the persons paying the funds. Accordingly, as explained in Rev. Rul. 73-411, *supra*, you have not demonstrated a pattern of membership support and thus fail a critical test of exemption under section 501(c)(6).

Even in the event you could reform your organization to meet the membership requirements, the information you have submitted indicates that you were primarily established to provide a place where the sale of locally grown and produced foods could take place, and your primary activity is the provision of a specific location for producers to sell their produce directly to the general public. This activity is very similar to the activity of the organization denied recognition of exemption under section 501(c)(6) of the Code as described in Rev. Rul. 58-224, *supra*, even though that organization held only one annual merchandise show. For the same reason that organization was determined to be substantially serving the retailers and exhibitors as a convenience and economy in the conduct of their businesses, you are providing your vendors with a convenience and economy in the conduct of their individual businesses, the sale of produce. This activity, in and of itself, does not improve the business conditions of one or more lines of business within the meaning of section 501(c)(6) of the Code and the regulations thereunder.

In addition, your activity of providing a farmers market provides your vendors with a convenience or economy in the operation of their own businesses. As stated in Rev. Rul. 68-264, *supra*, such an activity is defined as a particular service. By primarily performing this activity, you are primarily engaged in an activity proscribed under section 1.501(c)(6)-1 of the regulations, and thus you are not entitled to exemption under section 501(c)(6) of the Code.

For these reasons, we conclude that you do not qualify for recognition of exemption from federal income tax under section

[REDACTED]

[REDACTED] You are required to file federal income tax returns.

You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your protest statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies of it will be forwarded to the Ohio key district office. Thereafter, any questions about your federal income tax status should be addressed to the Ohio EP/EO key district office. The mailing address for that office is: Internal Revenue Service, EP/EO Customer Service, P. O. Box 2508, Cincinnati, OH 45201.

When sending additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following address on the envelope:

Internal Revenue Service  
OP:E:EO:T:2-[REDACTED] Room 6539  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224

Sincerely yours,

(signed) Garland A. Carter

Garland A. Carter  
Chief, Exempt Organizations  
Rulings Branch 5

OP:E:ED:T:2 OP:EEOT:2  
[REDACTED]  
[REDACTED]  
[REDACTED]